

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,	)	Case No.: 2:10-cr-121-RLH
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
vs.	)	
	)	
BRETT DEPUE,	)	
	)	
Defendant.	)	
	)	

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the pleadings and arguments of counsel, and good cause appearing therefore, the Court finds that:

1. After appeal and remand for a new trial, “trial shall commence within seventy days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within seventy days impractical. 18 U.S.C. § 3161(e). Here, the action occasioning the retrial was the Ninth Circuit’s memorandum disposition vacating Defendant’s convictions and remanding to this Court for further proceedings. (Doc. 264.) This action became final when the Ninth Circuit issued the formal mandate on March 30, 2015. (Doc. 265.) Seventy days from this date is June 8, 2015.

1           2.     The United States Attorney's Office submitted paperwork requesting  
2 Defendant's transportation from prison in Arizona to Las Vegas on April 21, 2015. Defendant  
3 was transported from May 5 to May 12, 2015, arriving at the Nevada Southern Detention Center  
4 in Pahrump, Nevada, on May 12, 2015. Ten of these days are excludable pursuant to the  
5 Speedy Trial Act, 18 U.S.C. § 3161(h)(1)(F), (e).

6           3.     At the status conference on May 19, 2015, the Court canvassed Defendant  
7 regarding whether he wanted to represent himself or be represented by counsel. Defendant  
8 chose to represent himself. The Court set a trial date of July 27, 2015, and after the hearing  
9 moved the trial date to August 10, 2015. (Doc. 268.) Defendant stated that he no longer has  
10 discovery in this case, but that he was ready to proceed to trial immediately.

11           4.     The Court ordered the government to reproduce discovery to defendant, which  
12 defendant agreed could be accomplished by providing discovery to his standby counsel.  
13 Discovery in this case consists of more than 88,000 pages and numerous audio recordings. On  
14 May 29, 2015, the government reproduced the two copies of the discovery to standby counsel.

15           5.     In the last trial, the United States called approximately 33 witnesses. The United  
16 States anticipates that approximately this same number of people will be called upon to testify  
17 in the next trial.

18           6.     On May 22, 2015, the government filed a motion to advance trial date. (Doc.  
19 269.) On May 29, 2015, the Court held a hearing on the government's motion to advance trial.  
20 After consulting with both the government and Defendant, the Court set a July 27, 2015 trial  
21 date. The time from May 22, 2015 to May 29, 2015, is excludable under 18 U.S.C. §  
22 3161(h)(1)(D).

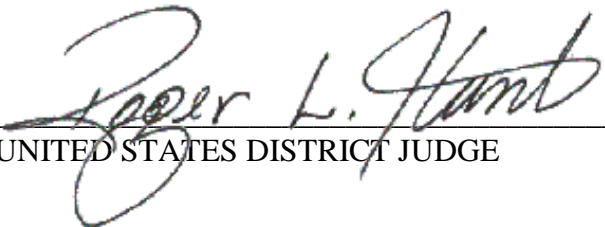
23           7.     A trial date sooner than July 27, 2015, is impractical based on the number of  
24 witnesses that the government must subpoena. In addition the government had to reproduce

1 voluminous discovery to Defendant. A July 27, 2015 trial date will allow the United States  
2 reasonable time to issue and serve subpoenas to these approximately 33 anticipated trial  
3 witnesses. The additional time from June 8, 2015 to July 27, 2015, which is not excludable  
4 under 18 U.S.C. §§ 3161(h)(1)(D) and (F), is excludable in computing the time within which  
5 the trial herein must commence pursuant to 18 U.S.C. § 3161(e), and 18 U.S.C.  
6 § 3161(h)(7)(A), considering the factors under 18 U.S.C. §§ 3161(h)(7)(B)(i) and (iv). The  
7 additional time is less than 180 days from March 30, 2015.

8 **ORDER**

9 **IT IS HEREBY ORDERED** that the trial set for August 10, 2015, at 9:00 a.m., is  
10 hereby vacated and advanced to July 27, 2015, at the hour of 9:00 a.m., in Courtroom 6C. It is  
11 further ordered that the calendar call is advanced from August 5, 2015, to June 30, 2015, at the  
12 hour of 8:30 a.m., in Courtroom 6C.

13 **DATED** this 2nd day of June, 2015.

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16 UNITED STATES DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has served the foregoing UNITED STATES' MOTION TO ADVANCE TRIAL DATE AND PROPOSED ORDER on defendant Brett Depue's standby counsel Angela Dows by means of electronic filing, and on pro se defendant Brett Depue by mailing the foregoing document by First-Class Mail, postage prepaid, to:

BRETT I. DEPUE, Pro Se, 81757-208  
Nevada Southern Detention Center  
2190 E. Mesquite Ave.  
Pahrump, NV 89060

DATED this 1st day of June, 2015.

/s/ Ashlin Brown  
Ashlin Brown  
Legal Assistant to Sarah Griswold